

## Surface Transportation Board, DOT

## § 1022.4

SOURCE: 77 FR 64432, Oct. 22, 2012, unless otherwise noted.

### § 1022.1 Scope and purpose.

The purpose of this part is to establish a method to adjust for inflation the civil monetary penalties provided by law within the jurisdiction of the Board. These penalties shall be subject to review and adjustment at least once every four years using the method specified in the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321, as it amends the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note). The inflation adjustment is calculated by increasing the maximum civil monetary penalty amount per violation by the Cost-of-Living Adjustment, which is the percentage (if any) by which the Consumer Price Index for June of the year preceding the adjustment exceeds the Consumer Price Index for June of the year the civil monetary penalty amount was last set or adjusted, multiplied by the statutory maximum amount, rounded to the nearest specified amount using the formula contained in the statute. The initial adjustment, however, is capped at 10% of the penalty, regardless of the applicable rate of inflation.

### § 1022.2 Definitions.

As used in this part:

(a) *Board* means the Surface Transportation Board.

(b) *Civil monetary penalty* means any penalty, fine, or other sanction that:

(1)(i) Is for a specific monetary amount as provided by federal law; or

(ii) Has a maximum amount provided by federal law;

(2) Is assessed or enforced by the Board pursuant to federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.

(c) *Consumer Price Index* means the Consumer Price Index for all urban consumers published by the Department of Labor.

(d) *Cost-of-Living Adjustment* means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the

adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

### § 1022.3 Civil monetary penalty inflation adjustment.

The Board shall, immediately, and at least once every four years thereafter—

(a) By regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Board by the inflation adjustment described in § 1022.4; and

(b) Publish each such adjustment in the FEDERAL REGISTER.

### § 1022.4 Cost-of-living adjustments of civil monetary penalties.

(a) Pursuant to the Debt Collection Improvement Act of 1996, as it amends the Federal Civil Penalties Inflation Adjustment Act of 1990, the increase of a civil monetary penalty assessed under this section shall be determined by multiplying the Cost-of-Living Adjustment by the existing maximum civil monetary penalty, rounded to the nearest specified amount using the guidelines set forth in paragraph (b) of this section.

(b) Any increase determined under paragraph (a) of this section shall be rounded to the nearest:

(1) Multiple of \$10 in the case of penalties less than or equal to \$100;

(2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; or

(6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

(c) The first adjustment of any civil monetary penalty required by § 1022.3 may not exceed 10% of such penalty.

(d) The first application of the inflation adjustment method required by

§ 1022.4

49 CFR Ch. X (10–1–14 Edition)

the statute results in the following ad- alties within the jurisdiction of the  
justments to the civil monetary pen- Board:

U.S. Code citation	Civil monetary penalty description	Maximum penalty amount year 1996	Adjusted maximum penalty amount year 2012
<b>Rail Carrier Civil Penalties</b>			
49 U.S.C. 11901(a) .....	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	\$5,000	\$5,500
49 U.S.C. 11901(b) .....	For each violation under sections 11124(a)(2) or (b) .....	500	550
49 U.S.C. 11901(b) .....	For each day violation continues .....	25	27.50
49 U.S.C. 11901(c) .....	Maximum penalty for each knowing violation under sections 10901–10906.	5,000	5,500
49 U.S.C. 11901(d) .....	For each violation under sections 11123 or 11124(a)(1) .....	100–500	110–550
49 U.S.C. 11901(d) .....	For each day violation continues .....	50	55
49 U.S.C. 11901(e)(1) .....	For each violation under sections 11141–11145 .....	500	550
49 U.S.C. 11901(e)(2) .....	For each violation under section 11144(b)(1) .....	100	110
49 U.S.C. 11901(e)(3)–(4) .....	For each violation of reporting requirements, for each day ....	100	110
<b>Motor and Water Carrier Civil Penalties</b>			
49 U.S.C. 14901(a) .....	Minimum penalty for each violation under sections 13501–13508, 13531, 13901, 13902(c), and for each day.	500	550
49 U.S.C. 14901(a) .....	Minimum penalty if not registered to provide passenger transportation, for each violation under section 13901, and for each day.	2,000	2,200
49 U.S.C. 14901(b) .....	Maximum penalty for each violation of the hazardous waste rules under section 3001 of the Solid Waste Disposal Act.	20,000	22,000
49 U.S.C. 14901(d)(1) .....	Minimum penalty for each violation of household good regulations, and for each day.	1,000	1,100
49 U.S.C. 14901(d)(2) .....	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	10,000	11,000
49 U.S.C. 14901(d)(3) .....	Minimum penalty for each instance of transportation of household goods without being registered.	25,000	27,500
49 U.S.C. 14901(e) .....	Minimum penalty for each violation of a transportation rule ...	2,000	2,200
49 U.S.C. 14901(e)(2) .....	Minimum penalty for each additional violation .....	5,000	5,500
49 U.S.C. 14903(a) .....	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	100,000	110,000
49 U.S.C. 14904(a) .....	For first violation, rebates at less than the rate in effect .....	200	220
49 U.S.C. 14904(a) .....	For all subsequent violations .....	250	275
49 U.S.C. 14904(b)(1) .....	Maximum penalty for first violation for undercharges by freight forwarders.	500	550
49 U.S.C. 14904(b)(1) .....	Maximum penalty for subsequent violations .....	2,000	2,200
49 U.S.C. 14904(b)(2) .....	Maximum penalty for other first violations under section 13702.	500	550
49 U.S.C. 14904(b)(2) .....	Maximum penalty for subsequent violations .....	2,000	2,200
49 U.S.C. 14905(a) .....	Maximum penalty for each knowing violation of section 14103(a), and any violation of section 14103(b).	10,000	11,000
49 U.S.C. 14906 .....	For first attempt to evade regulation .....	200	220
49 U.S.C. 14906 .....	Minimum amount for each subsequent attempt to evade regulation.	250	275
49 U.S.C. 14907 .....	Maximum penalty for recordkeeping/reporting violations .....	5,000	5,500
49 U.S.C. 14908(a)(2) .....	Maximum penalty for violation of section 14908(a)(1) .....	2,000	2,200
49 U.S.C. 14910 .....	When another civil penalty is not specified under this part, for each day.	500	550
49 U.S.C. 14915(a) .....	Minimum penalty for holding a household goods shipment hostage, for each day.	10,000	11,000
<b>Pipeline Carrier Civil Penalties</b>			
49 U.S.C. 16101(a) .....	Maximum penalty for violation of this part, for each day .....	5,000	5,500
49 U.S.C. 16101(b)(1) .....	For each recordkeeping violation under section 15722, each day.	500	550
49 U.S.C. 16101(b)(2) .....	For each inspection violation liable under section 15722, each day.	100	110
49 U.S.C. 16101(b)(3) .....	For each reporting violation under section 15723, each day ..	100	110
49 U.S.C. 16103(a) .....	Maximum penalty for improper disclosure of information .....	1,000	1,100

**Parts 1030–1039—Carriers Subject  
to Part I, Interstate Commerce Act**

**PART 1033—CAR SERVICE**

Sec.

1033.1 Car hire rates.

1033.2 Car service orders.

AUTHORITY: 49 U.S.C. 721, 11121, 11122.

**§ 1033.1 Car hire rates.**

(a) Definitions applicable to this section:

(1) *Car*. A freight car bearing railroad reporting marks, other than an excluded boxcar as defined in §1039.14(c)(2) of this chapter whenever it is owned or leased by any class III carrier and bears a class III carrier's reporting marks.

(2) *Car hire*. Compensation to be paid by a user to an owner for use of a car. Such compensation may include, but need not be limited to, hourly and mileage rates.

(3) *Fixed rate car*. Any car placed in service or rebuilt prior to January 1, 1993 or for which there was a written and binding contract to purchase, build, or rebuild prior to July 1, 1992, regardless of whether such car bore railroad reporting marks prior to January 1, 1993, provided, however, that until December 31, 1993, all cars shall be deemed to be fixed rate cars.

(4) *Market rate car*. Any car that is not a fixed rate car.

(5) *Owner*. A rail carrier entitled to receive car hire on cars bearing its reporting marks.

(6) *Prescribed rates*. The hourly and mileage rates in effect on December 31, 1990, as published in Association of American Railroads Circular No. OT-10 found in the information section of tariff STB RER 6411-U known as the Official Railway Equipment Register. This information can be obtained at the Association of American Railroads or the Board. Prescribed rates will be enhanced to reflect OT-37 surcharges and Rule 88 rebuilds for work undertaken and completed during 1991 and 1992, and for rebuilding work for which there was a written and binding contract prior to July 1, 1992.

(7) *User*. A rail carrier in possession of a car of which it is not the owner.

(b) *Fixed rate cars*. Car hire for fixed rate cars shall be determined as follows:

(1) Except as provided in paragraph (b)(3) of this section, for a 10-year period beginning January 1, 1993, the prescribed rates shall continue to apply to fixed rate cars without regard to the aging of such cars subsequent to December 31, 1990. Prescribed car hire rates shall not be increased for any additions and betterments performed on such cars after December 31, 1990. Any OT-37 surcharge to prescribed rates for work performed prior to January 1, 1993 shall expire upon the earlier of:

(i) The car becoming a market rate car; or

(ii) The expiration date provided in Association of American Railroads Circular No. OT-37.

(2) Upon termination of the 10-year period specified in paragraph (b)(1) of this section, all fixed rate cars shall be deemed to be market rate cars and shall be governed by paragraph (c) of this section.

(3) (i) During each calendar year beginning January 1, 1994, a rail carrier may voluntarily elect to designate up to 10% of the cars in its fleet as of January 1, 1993 to be treated as market rate cars for the purposes of this section. The 10% limitation shall apply each calendar year and shall be non-cumulative. Cars designated to be treated as market rate cars shall be governed by paragraph (c) of this section. Such election shall be effective only in accordance with the following provisions:

(A) An election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners if:

(1) The rail carrier making the election has legal title to the car; or

(2) The rail carrier making the election does not have legal title to the car but obtains written consent for such election from the party holding legal title; or

(3) The transaction pursuant to which the party holding legal title to the car has furnished the car to the rail carrier making the election was entered into after January 1, 1991.

(B) An election shall be irrevocable and binding only for the term of the